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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/713,331	11/17/2003	Eric Steven Morell		9856

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EXAMINER

NGUYEN, KIEN T

ART UNIT PAPER NUMBER

3712

DATE MAILED: 08/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/713,331

Applicant(s)

MORELL, ERIC STEVEN

Examiner

Kien T. Nguyen

Art Unit

3712

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-3 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Rules of the game" by the Diagram Group, 2 pages, 1974.

The drawings on two pages of the "Rules of the game" show a track and field arena comprising a multi-lane oval and straightway tracks, high jump, long jump/triple jump, pole vault and shot put stations; the arena comprising an oval track having two turns, at least two straightaway tracks having at least six lanes. It is noted that "Rules of the game" only shows one of each of the listed features above instead of at least two. However, such difference is merely a multiplication of the same part. Accordingly, it would have been a matter of design choice to provide additional elements as listed above for the purpose of accommodating a plurality of events within the track. Also, "Rules of the game" shows, for example, the high jump and the long jump/triple jump are located a distance with each other and they certainly can be used competitively without interfering with the other.

Regarding claim 3, it is noted that the shot put station as shown in the drawing of "Rules of the game" is inside the track instead of outside. However, the amount of stations located within the track is dictated by the size of the track. Accordingly, it would

Art Unit: 3712

have been a matter of design choice to locate the shop put stations outside the track if the size of the track is not sufficient.

Claims 4-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Rules of the game" as applied to claim 1 above, and further in view of Schildge, Jr. U.S. Patent 4,802,314.

It is noted that "Rules of the game" failed to specifically teach the track having an arena roof as set forth in these claims. However, Schildge, Jr. teaches an arena having a roof (20) for covering a track or athletic field having the roof having vertical support members outside the track or athletic field as shown in Fig. 2. Therefore, it would have been obvious to one of ordinary skill in the art to modify the track and field arena of "Rules of the game" with the roof as taught by Schildge, Jr. for the purpose of protecting the arena during bad weather.

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 5-17 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. Claims 5-17 failed to recite any specific method that contain any specific utility, all of the steps as set forth therein are merely abstract ideas of how to conducting a track and field event.

Conclusion


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The enclosed references are cited for interest.

Art Unit: 3712

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kien T. Nguyen whose telephone number is (703) 308-2493. The examiner can normally be reached on 7:30 AM-5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Kien T. Nguyen
Primary Examiner
Art Unit 3712

Ktn